IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 146 OF 2001.

Mrs. Conceicao Fernandes,
wife of Milagres Fernandes,
daughter of Lourenco Fernandes,
married, major in age,
residing at Digas Panchwadi,
Ponda, Goa. .... Appellant.

Versus

Mr. Milagres Fernandes,
son of Sebastiao Simao Fernandes,
married, major in age,
residing at C/o Filomena Diniz,
Baag, Curchorem, Goa. .... Respondent.

Ms. S. Naik, Advocate for the Appellant.

Shri Shivan S. Dessai, Advocate for the Respondent.

CORAM: R. M. LODHA, J.

DATE: 28th OCTOBER, 2005.

ORAL JUDGMENT:

This First Appeal is directed against the Judgment and Decree dated 22nd December, 2000 passed by the Civil Judge, S.D., Ponda in Matrimonial Civil Suit No.10/2000/A whereby the said Court dismissed the suit for divorce and dissolution of marriage filed by the present appellant.

2. Conceicao Fernandes and Milagres Fernandes are the parties to the litigation. They are wife and husband. Their marriage was solemnised in the Office of the Civil Registrar of Quepem on 14th May, 1994 in the Marriage Registration Book. According to Conceicao (wife), before the marriage, she made representation to Milagres (husband) that it would not be possible for her to stay at Assolna, Quepem where he resided as that house was very small and occupied by other family members and there was no separate room for them to stay. She requested Milagres that after marriage they should live together in the house of the plaintiff's mother at Digas, Panchwadi. As per the said agreement, after the marriage was celebrated, both of them started living in the house of the mother of the plaintiff. However, after few days of the marriage disputes arose between the parties. Milagres would come to the house under the influence of alcohol and harass her. It is the case of Conceicao that having got the employment, she went to England in the month of July, 1994. She had to visit Goa in the month of November, 1994 as her mother reported that Milagres was harassing her. During her stay from November, 1994 till December, 1994, Milagres illtreated her and her mother to such an extent that it became unbearable. She returned to England in the month of December, 1994. In the month of May, 1995, Milagres left the house at Digas, Panchwadi. When she came back to Goa, she tried to settle the matter amicably but without any success. Conceicao alleged that her

husband illtreated her and caused injuries to her body. According to her, in the month of May, 1995, her husband permanently left her company and abandoned her. In the backdrop of these facts, she claimed for decree of divorce and dissolution of marriage.

3. Milagres filed written statement and traversed the allegations made in the plaint. He averred that after the marriage both of them started residing in the matrimonial house at Assolna. It was after the marriage that his wife represented to him that she was having a house at Digas, Panchwadi and that belonged to her and her mother exclusively and that they should reside there and, accordingly, they started residing at Digas, Panchwadi. According to Milagres, he was humiliated and harassed by his wife's brother. His wife left for England in the month of July and she returned back in the first week of December, 1994 and left for England on 26th December, 1994. He admitted that he left the house at Digas, Panchawadi in the month of May, 1995. But that he did on account of illtreatment and humiliation of Conceicao's brother. Milagres alleged that though Conceicao returned from England on 4.6.1995 but she did not contact him nor did she join matrimonial house at Assolna. Milagres averred that he had always been ready and willing that his wife stayed with him, but to the contrary she left the matrimonial house. He denied any illtreatment to the wife. He, therefore, prayed that his

wife was not entitled to a decree of divorce and dissolution of marriage.

4. In the light of the pleadings of the parties, the trial Court framed four issues :-

1. “Whether the plaintiff proves that matrimonial resident of the parties is at her mother's place Digas Panchawadi ?
2. Whether the plaintiff proves that defendant caused illtreatment to her ?
3. Whether plaintiff proves that defendnt abandoned matrimonial resident, Digas Panchawadi for a period of more than 3 years ?
4. Whether the defendant proves that plaintiff has abandoned the matrimonial resident Assolda Quepem without any reason ?

What relief ? What order ? ”

5. Conceicao (P.W.1) examined herself. She also examined her brother-in-law Francis Mascarenhas (P.W.2).

6. On the other hand, Milagres (D.W.1) examined himself. He also examined Rock Fernandes (D.W.2), Santan Fernandes (D.W.3) and

Kistor Fernandes (D.W.4).

7. The Trial Court after hearing the parties and in the light of the evidence on record, dismissed the wife's suit for divorce and dissolution of marriage.

8. The first issue that arises for my consideration is whether the matrimonial house of the parties was wife's house at Digas, Panchawadi or it was at Assolna where the husband and his family were residing. On the one hand, according to the wife, as per the agreement entered into between them before the marriage, the matrimonial house was at Digas, Panchawadi and as a matter of fact, after the marriage both the parties resided there. The husband, on the other hand would depose that immediately after the marriage, the parties resided at Assolna, but thereafter the wife represented to him that she has house of her own and her mother at Digas, Panchawadi, he agreed to reside at Digas, Panchawadi. There is further evidence that in the month of July, 1994 the wife left for England; the husband continued to stay at Digas, Panchawadi for about 9/10 months thereafter and then in the month of May, 1995 he left the wife's house at Digas, Panchawadi and started living at Assolna.

9. Article 40 of the Family Laws (Chapter V – Of the Conjugal Union as Regards to the Persons), requires the wife to reside with the husband.

Article 40 reads thus :-

" A wife shall reside with the husband, unless the latter without her concurrence desires to reside in the colonies or in a foreign country. In such a case, however, the Judge shall decide according to the provisions of Article 6. "

10. From the Family Laws that is applicable to the parties, it is clear, that the wife shall reside with the husband unless the husband without her concurrence desires to reside in the colonies or in a foreign country. The resident of the wife under the relevant Portuguese law which is applicable to the parties, is the place where the husband resides. Matrimonial domicile or matrimonial home is the place where the husband and wife, as a married couple, have established as their home. Surely the wife's mother home at Digas, Panchawadi cannot be accepted as their matrimonial domicile even if the parties are said to have resided there after the marriage. That place was not the permanent abode of the parties. Merely because the husband resided with the wife at her mother's place for few months, that place would not be matrimonial domicile. Matrimonial

home is not a place of temporary arrangement; rather a place which is permanent place of residence. In law when wife is supposed to reside with the husband, it is husband's residence that is the matrimonial domicile. In the circumstances, therefore, the wife's mother's house at Digas, Panchawadi cannot be held as matrimonial domicile of the parties.

11. The next issue is whether the husband abandoned the matrimonial home for a period of more than three years. Having already held that the wife's mother's house at Digas, Panchawadi was not the matrimonial home of the parties, the fact that the husband left the house at Digas, Panchawadi in the month of May, 1995, cannot be of help to the wife's case that the husband abandoned the matrimonial home. The wife's evidence suggests that she was in employment in England for the last eighteen years. As a matter of fact, after two months of marriage, in the month of July, 1994, she left for England. She came to Goa hardly for a month in the month of November/December, 1994. Then after May, 1995, she visited Goa intermittently but did not stay with the husband. In these facts how can husband be held guilty of having abandoned the matrimonial home.

12. The case of the wife that the husband illtreated her is not established by reliable and cogent evidence. The instances of illtreatment that she gave hardly inspired confidence. Admittedly despite alleged

repeated assaults, no complaint was made by the wife to the Police. It cannot be overlooked that most of the time, the wife has been living out of India. As a matter of fact, in a couple of months after the marriage, the wife left for England. Rather there appears some substance in the case set up by the husband that he was humiliated by wife's brother and mother. There is likelihood of the husband being humiliated by the wife's brother and mother because he was unemployed and then he was staying at their house.

13. None of the grounds of dissolution of marriage is made out by the wife. The consideration of the evidence by the trial Court cannot be said to suffer from any error of law or fact. The First Appeal warrants no interference.

14. First Appeal is, accordingly , dismissed with no order as to costs.

R. M. LODHA, J.

sl.